

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Constitutional Safeguards	NUMBER: 2-1
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INDEX WORDS

Abandoned property
 Authority; limitations
 Confessions
 Consent to search
 Constitutional safeguards
 Curtilage
 Discretion
 Emergency searches
 Eyewitnesses
 Hearsay
 Interrogations
 Interviews
 Lineups
 Miranda rights
 Plain view search
Probable cause
Reasonable suspicion
 Search and seizure;
 limitations
 of vehicles (custodial arrests)
 of vehicles (generally)
 of vehicles (inventory)

I. POLICY

The U. S. Constitution guarantees every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently,

these safeguards have placed limitations on the authority of law enforcement to enforce federal, state, and local laws. The Sheriff expects deputies to act with due regard for citizens' civil liberties. All parties that are hearing impaired or who do not understand English will be afforded interpreters should a constitutional issue become apparent.

II. PURPOSE

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for assuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by deputies, and to define the authority, guidelines and circumstances when deputies should exercise alternatives to arrests and pre-trial confinement.

III. PROCEDURES - GENERAL

A. Law enforcement authority to enforce laws:

1. Sections 15.2-1603 and 15.2-1609 of the Code of Virginia give the Sheriff and deputies of counties and cities the authority to enforce the criminal laws of the Commonwealth and local ordinances.
2. Section 49-1 of the Code of Virginia requires that all deputies, upon entering their office, take an oath whereby they swear to support the Constitution of the United States and the Commonwealth of Virginia.

B. Limitations on law enforcement authority:

Limitations on law enforcement authority are derived from federal, state, and local statutes. Limitations are further derived from judicial interpretation of laws, opinions of the Attorney General, and the Commonwealth's Attorney. Additional limitations are identified by Sheriff's Office policies/rules and regulations.

1. Statutory Limitations: These limitations include, but are not limited to:
Enforcement of laws outside of the county limits. Section 19.2-249 of the Code of Virginia grants authority to enforce offenses 300 yards beyond county to county or county to city boundaries.
2. Judicial Limitations:
Courts constantly interpret laws that place limitations on the authority of law enforcement officers. The more common include: Miranda rights/warnings, rulings on search and seizure, eyewitness identification, and lineups.

IV. MIRANDA RIGHTS

- A. The Fifth Amendment right against self-incrimination:
The voluminous case law covering Miranda (Miranda v. Arizona, 384 U.S. 436, 1966) warnings has established several guidelines for deputies to help decide when warnings must be administered. Miranda applies only to custodial interrogation. Interrogation is defined below. As to what constitutes custody, if a reasonable person in the suspect's position believes that he or she is not free to leave, then Miranda applies. Note that the deputy's view of what constitutes custody and that of the suspect may differ. Deputies must remember that the reasonable belief of the suspect is what counts.

In determining whether a suspect is free to leave the deputy's presence, a court will look at the circumstances of the interrogation: whether questioning is conducted at the suspect's residence, in a deputy's car or at the sheriff's office. The court will examine whether the environment may have been construed as coercive during its determination on whether or not the interview was custodial. Practically speaking, an arrest or physical restraint of a suspect places him or her in custody, and Miranda warnings must be administered before the deputy asks questions about the offense. In short, then, Miranda warnings must be given when:

1. The suspect reasonably believes that he/she is in custody, and
2. The suspect is interrogated.

B. Definitions:

1. An interview, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or other citizen.
2. An interrogation, according to the Supreme Court, includes the following, per Rhode Island v. Innis, 446 U.S. 291 (1980): ". . . express questioning or its functional equivalent. . . any words or conduct on the part of a law enforcement officer (other than those normally attendant to arrest and custody) that the law enforcement officer should know are reasonably likely to elicit an incriminating response from the suspect."
3. Deputies are reminded that an interrogation does not rely solely or exclusively on words: conduct can be the "functional equivalent" of asking questions.

C. Rights Admonition:

1. In order to achieve uniformity in administering Miranda warnings, deputies will be issued cards with the Miranda warnings and waiver on them. Deputies will advise suspects:
 - a. "You have the right to remain silent."
 - b. "Anything you say, can and will be used against you in a court of law."
 - c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."
 - d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
 - e. "You can decide at any time to exercise these rights and not answer any questions or make any statements."
2. After advisement of Miranda warnings, in order to secure a waiver, deputies shall determine by asking the suspect if the above rights

are understood and if he or she is willing to answer questions or make a statement.

NOTE: Miranda cards are provided on the back of the Virginia State Sheriff's Association Membership Card.

3. After the rights have been read, understood, and the person wishes to waive them, the deputy may have the suspect sign the waiver of rights form.

Deputies must cease questioning whenever the suspect invokes the right to silence.

- a. After the suspect has been arrested, deputies may not try to elicit incriminating statements unless the suspect waives the right to counsel.
 - b. If the suspect has been arrested and has requested counsel, deputies shall not try to obtain incriminating statements unless the suspect re-initiates conversation with them.
4. Deputies will take care when advising juveniles of their rights to ensure that the rights are understood before securing a waiver. Deputies should honor a child's request to speak to a parent or guardian before waiving his or her rights.

D. Exemptions/Special cases:

1. Miranda warnings are not normally required in the following situations:
 - a. Brief non-custodial investigative questioning/detention (suspect is free to go).
 - b. Roadside questioning during routine traffic stops;
 - c. Identification procedures such as fingerprinting, conducting a line-up, sobriety tests;
 - d. Volunteered, spontaneous statements (Once the deputy has heard the suspect express spontaneous incriminating statements, the deputy shall then advise the suspect of

Miranda rights and obtain a waiver before undertaking additional questions.);

Note: During investigative detentions, when handcuffs are utilized for officer safety, Miranda warnings shall be given before any questioning, since a reasonable person would believe that he/she was in custody.

2. Public safety exception:

When a deputy urgently needs information from a suspect because lives are in imminent danger, deputies may delay giving Miranda warnings until the deputies have received information sufficient to dispel the emergency. In New York v. Quarles, 104 S. Ct. 2626 (1984), police frisked a felony suspect who was thought to be armed. Finding no weapon and worried about its location because of nearby children and without administering Miranda, the deputies asked where the gun was and the suspect replied, giving the location. The presence of the gun constituted a public safety hazard, justifying the question in the absence of Miranda.

3. No firm guidelines exist governing when fresh warnings must be given. In considering whether previously-administered Miranda rights have become legally stale, investigators must consider:

- a. The length of time between first warnings and later interrogation;
- b. Whether warnings and later interrogation were given in the same place;
- c. Whether warnings and later interrogation were by the same or different deputies;
- d. The extent to which the later statement differed from a previous one;
- e. The apparent intellectual and emotional state of the suspect.

V. SEARCH AND SEIZURE

- A. Definition: Law enforcement action is termed a search where (1) there is a "prying into hidden places by the deputy" in which (2) the person whose premises or person is being searched has a reasonable expectation of privacy.
- B. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons, and things. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to law enforcement conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that Fourth Amendment rights are protected, deputies will obtain search warrants upon probable cause in all appropriate criminal cases except the following:
 - 1. Consent searches
 - 2. Emergency searches
 - 3. Plain view
 - 4. Abandoned property
 - 5. Inventory searches of vehicles
 - 6. Pat-downs of suspicious persons (See GO 2-3)
 - 7. Incident to arrest (See GO 2-4)
- C. Consent:
 - 1. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search.
 - a. Generally, such authority extends to a person who shares use, access, or control of property.
 - b. If two people have joint ownership of property, either may give consent.
 - c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property.

- d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use.
 - e. A parent may consent to a search of premises occupied by a dependent child.
 - f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
 - g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).
- 2. Consent must be voluntarily given. If a deputy requests consent from a citizen under circumstances, which a reasonable person would consider coercive, then deputies must seek a warrant. The deputy may have the burden of demonstrating voluntariness (Schneckloth v. Bustamonte, 412 U.S. 218, 1973).
 - 3. A person who initially gives consent may withdraw it at any time. Deputies shall then secure the premises and seek a warrant.
- D. Emergency searches:
- 1. A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances."
 - 2. The Virginia Supreme Court, in Verez v. Commonwealth, 337 S.E. 2d 749, 1985, gave ten factors to be considered in evaluating whether an emergency exists:
 - a. The degree of urgency involved and the time required to obtain a warrant.
 - b. The deputy's reasonable belief that contraband is about to be removed or destroyed.
 - c. The possibility of danger to others including deputies, left to guard the site.

- d. Information that the possessors of contraband are aware that police are on their trail.
 - e. Whether deputies reasonably believe, the suspects are armed.
 - f. Whether the deputies have probable cause.
 - g. Whether the deputies have strong reason to believe the suspects are present on the premises.
 - h. The likelihood that the suspects will escape.
 - i. The suspect's entry onto premises after hot pursuit.
 - j. Whether the offense is serious, or involves violence.
- E. Plain view:
- 1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities of the crime), the deputy must inadvertently observe the property in a place where he has a legal right to be.
 - 2. It must be immediately apparent to the deputy that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
 - a. The deputy may not move items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, deputies shall obtain a warrant.
- F. Abandoned property:
- 1. A search warrant is not required for property that has been abandoned.
 - 2. To constitute abandoned property, two conditions must apply:
 - a. Property was voluntarily abandoned.
 - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.
- G. Inventory searches of vehicles:

A lawfully impounded vehicle, or a vehicle removed from the street and placed in law enforcement custody may have its' contents inventoried for purposes of law enforcement management. Any evidence or contraband found during the inventory may be used to formulate probable cause for a subsequent search or arrest. The inventory must be a routine Sheriff's Office procedure.

VI. PROBABLE CAUSE AND REASONABLE SUSPICION

A. Probable cause:

Most searches and all arrests are based on the deputy's perception of probable cause. According to the Supreme Court, probable cause exists where the facts and circumstances are such that it would cause a reasonable law enforcement officer to believe that a crime has been or is being committed. The probable cause should be based on personal knowledge or trustworthy information.

1. A deputy must have probable cause to undertake a search or make an arrest.
2. The aim of probable cause is to make a formal charge.

B. Reasonable suspicion:

Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced deputy to believe that criminal activity may be afoot.

1. A deputy must have reasonable suspicion to temporarily detain a citizen.
2. When a deputy has reasonable suspicion, he or she may undertake a pat down of a suspect's outer clothing for weapons and record the circumstances of the encounter. The aim of reasonable suspicion is to resolve an ambiguous situation.

C. Elements:

1. Probable cause may be established through investigation and

observation, witnesses, confidential informants, or through anonymous sources provided that the information is backed by investigation.

2. Unnamed informants may be used in an affidavit for a search warrant if information is included about why the informant is credible (reliability) and he has information of specific use in the investigation (knowledge). See GO 2-11 for further information on informants.

VII. EYEWITNESSES

The Supreme Court has addressed eyewitness identifications in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by deputies. Eyewitness identifications may take the following for

A. On-scene investigation:

One-on-one identifications have been held constitutional so long as the period of time between the offense and the identification is brief. One to three hours would be a reasonable amount of time.

B. Line-ups:

Line-ups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. The accused have the right to have an attorney present during the line-up and the line-up may not take place until that attorney is present. The attorney may not offer any suggestions concerning the conduct of the line-up, but may merely observe. All line-ups must be documented by the deputy as to date, time, place, name of participants and witnesses and location of suspect/participants.

C. Photo line-ups:

In conducting photo line-ups, the photos must depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo line-up containing 6-8 photos would be

reasonable. Photographs shown to witnesses will not contain any identifying information. Photo line-ups will be documented as under section VII. B above.

D. Hearsay:

1. Deputies must understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.
 - a. According to the Virginia Supreme Court, hearsay is "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say."
2. Hearsay is generally inadmissible in court.
3. Some hearsay is useful as evidence. Exceptions to the Hearsay Rule, and therefore admissible, include:
 - a. A dying declaration, or a statement, oral or written, made by a mortally wounded person who knows that he is about to die and has abandoned hope of recovery.
 - b. Spontaneous declarations, or exclamations of a participant or bystander concerning an incident, made without time for reflection.
 - c. Public records, or reports prepared by public officials under a duty imposed by law or regulation.
 - d. Spontaneous admission or admission following admonition of Miranda warnings.

VIII. VEHICLES

- A. Preferably, deputies shall search vehicles under authority of a warrant whenever there is sufficient time to obtain one.
 1. If a vehicle has broken down, or is parked on private property and there is little likelihood that the vehicle will be driven away or that evidence within it will be destroyed, deputies shall obtain a warrant to search it.

B. Custodial arrests:

Deputies may search a vehicle without first obtaining a warrant if:

1. No opportunity exists for securing the warrant, and
2. The search is made pursuant to a full custodial arrest of a person who is inside of or beside a vehicle at the time of arrest, and
3. The search is based upon probable cause (See GO 2-4 for additional discussion of searches incident to arrests).
 - a. A "full custodial arrest" means an arrest where the suspect is taken into custody for the purpose of transporting him to a holding facility or jail.
 - b. LIMITATIONS: Deputies searching vehicles under the above circumstances must limit their search as follows:
 - i. To the entirety of the person arrested.
 - ii. To the passenger compartment of the auto and the area in the immediate control of the person being arrested from which he could reach for a weapon or for evidence of a crime. The search may include open or closed containers in the passenger compartment.
 1. The search may not extend to the trunk unless probable cause has been established during the search incident to an arrest that contraband, weapons, fruits or instrumentalities of the crime are located there.
 - iii. The search incident to custodial arrests legally can be undertaken to protect the deputy, prevent the suspect from escape, and to prevent destruction of evidence.

C. Probable cause only - Apart from custodial arrests, deputies may search a vehicle without a warrant if:

1. Probable cause exists that the vehicle contains evidence of an illegal act, and
2. The vehicle is moving or capable of being moved quickly so that if the deputy does not search immediately, evidence could be destroyed or lost.
3. When deputies have probable cause to believe that contraband is concealed somewhere within a vehicle, they may conduct a warrantless search of the entire vehicle, including all containers and packages that may conceal the object of the search. If, however, probable cause is directed at a specific container within the vehicle, a deputy may seize the container and must obtain a warrant before searching it.

IX. LIMITATIONS ON AUTHORITY

- A. Limitations on law enforcement authority by local courts:
Occasionally, the local courts may limit law enforcement authority to enforce state statutes and local ordinances. These limitations include, but are not limited to:
 1. The enforcement of certain parking ordinances.
 2. The handling of juvenile offenders.
 3. The issuance of summonses as opposed to arrests/incarceration.
 4. Restrictions relating to the animal control ordinance.
- B. Limitations on law enforcement authority by Commonwealth's Attorney:
Occasionally, the Commonwealth's Attorney may issue opinions to the Sheriff's Office, which may impose limitations on deputies. These areas include, but are not limited to:
 1. Prosecution of certain cases.
 2. Extradition.
 3. Enforcement of certain statutes pending opinions from the Attorney General's Office.

- C. Limitations on enforcement actions by the Board of Supervisors, nor the Sheriff include, but are not limited to:
 - 1. County Code violations.
 - 2. Parking violations.
 - 3. Policy/rules and regulations/general orders, e.g. the use of force.
- D. Changes in laws/interpretational limitations:

Periodically, changes take place that may impose new limitations on the Sheriff's and his deputies authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the Commonwealth's Attorney. In case immediate changes in Sheriff's operations are required, the Commonwealth's Attorney's Office may provide information orally and confirm it in writing.

X. CONSTITUTIONAL REQUIREMENTS - GENERAL

- A. Compliance with constitutional requirements during criminal investigations:
 - 1. All deputies when conducting criminal investigations will take all precautions necessary to ensure that all persons involved are afforded their constitutional safeguards. Deputies will ensure that:
 - a. All statements or confessions are voluntary and non-coercive.
 - b. All persons are advised of their rights in accordance with this general order.
 - c. All arrested persons are taken promptly before a magistrate for formal charging.
 - d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
 - e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See RR 1-13, Media Relations.
- B. The use of discretion by deputies:

1. Deputies, by the nature of their job, are required to exercise discretion in the performance of their duties. The Sheriff's Office provides deputies with written policy and procedures, Sheriff's Office orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
 2. With the exception of Sheriff's Office Rules and Regulations, Sheriff's Office General Orders generally give deputies some latitude to consider in exercising their discretion. It is up to the individual deputy to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.
- C. Alternatives to arrest/pre-arraignment confinement:
1. Under certain circumstances, deputies are faced with situations where an arrest and pre-arraignment confinement will not be possible. In this case, deputies may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply a warning. Examples may include:
 - a. Mentally or emotionally disturbed persons.
 - b. Domestic situations where counseling may be appropriate.
 - c. Juvenile offenders.
 - d. Transient persons who need shelter and food.
 - e. Certain misdemeanor cases.
 2. Authority to issue summonses in lieu of arrest/confinement:
 - a. Section 19.2-74 of the Code of Virginia authorizes deputies to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except DUI and drunk in public. Additionally, Section 19.2-74 authorizes the use of summonses when enforcing county ordinances.

b. The use of summonses by deputies:

In determining whether a summons should be used, the deputy should:

- i. Decide whether the offense committed is serious.
- ii. Make a judgment as to whether the accused poses a danger to the public or himself/herself.
- iii. Decide, based on circumstances, whether the person may disregard a summons.
- iv. Determine will the criminal activity continue.

3. Informal handling of criminal matters:

Deputies often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the deputy a better solution to the problem will be achieved by use of alternatives to enforcement, the deputy should refer the citizen to a social services agency.

4. Use of warnings as an alternative to arrest:

The use of warnings may sometimes provide a satisfactory solution to a problem and may enhance the public perception of the Sheriff's Office. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the deputy should consider:

- a. The seriousness of the offense.
- b. The likelihood that the violator will heed the warning.
- c. The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.
- d. The wishes of the victim, if applicable.

5. Limitations on intelligence activity:

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- a. Sheriff's Office intelligence gathering activities will be limited to that information concerning criminal conduct that presents a threat to the community.
 - b. Sheriff's Office personnel and equipment will only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the Sheriff.
 - c. Intelligence information will be collected, used and processed in full compliance with all laws.